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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,322	04/05/2001	Laurent Schaller	P0021814.00	5639

77218 7590 05/27/2010

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EXAMINER	
PATEL, NIHIR B	
ART UNIT	PAPER NUMBER
3772	

NOTIFICATION DATE	DELIVERY MODE
05/27/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.vasciplegal@medtronic.com

Office Action Summary	Application No.	Applicant(s)	
	09/828,322	SCHALLER ET AL.	
	Examiner	Art Unit	
	NIHIR PATEL	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 December 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26 and 31-55* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *31-38* is/are allowed.

6)☒ Claim(s) *1-4,20,24-26,39-44,47-51,54 and 55* is/are rejected.

7)☒ Claim(s) *5-19, 21-23, 45, 46, 52 and 53* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application.
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on April 20th, 2009, with respect to claims 1-6, 20, 24-26, 39-44, 47-51, 54 and 55 have been fully considered and are persuasive. The previous rejection of the office action dated February 17th, 2009 has been withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims **1-4, 20, 24-26, 39-44, 47-51, 54 and 55** are rejected under 35 U.S.C. 102(b) as being anticipated by Krumme (US 4,485,816).

4. **As to claim 1,** Krumme teaches an apparatus that comprises two clips **(see fig. 1 below)**, each sized and shaped to attach tissues **3** and hold the tissues together therein **(see fig. 1b below)**, wherein at least one of said two clips is a self-closing clip adapted to self-transition from a first shape to a second shape **(see col. 3 lines 50-60)**, the first and second shapes being different **(see figs. 1a and 1b)**; and a bridge portion **(see figs. 1a and 1b)** connecting said two clips and spacing said clips from one another.

5. **As to claim 2,** Krumme teaches an apparatus wherein the bridge portion is substantially straight **(see figs. 1a and 1b)**.

6. **As to claim 3,** Krumme teaches an apparatus wherein each of the two clips has an open configuration and a closed configuration independent of an other of the two clips **(see figs. 1a and 1b)**.

7. **As to claim 4,** Krumme teaches an apparatus wherein the bridge portion provides a predetermined spacing between the clips in the closed configuration **(see figs. 1a and 1b)**.

8. **As to claim 20,** Krumme teaches an apparatus that comprises a surgical fastener comprising two clips **(see fig. 1 below)** sized and shaped to attach tissues **3** and hold the tissues therein **(see fig. 1 below)** including at least one self-closing clip having an open configuration **(see figs. 1a and 1b)** and a closed configuration **(see figs. 1a and 1b)**, wherein the closed configuration is an unbiased configuration having a loop shape **(see figs. 1a and 1b)** and the open configuration is a biased configuration having a shape different from a shape of the closed configuration **(see figs. 1a and 1b)**, and a bridge portion **(see figs. 1a and 1b)** having a substantially straight portion connecting the two clips; and a release mechanism **(see col. 3 lines 50-60)** having a first position to bias said self-closing clip in said open configuration and a second position to unbias said self-closing clip into said closed configuration

9. **As to claim 24,** Krumme teaches an apparatus that comprises a surgical fastener having two ends **(see fig. 1 below)** including a first end and a second end and including two clips **(see fig. 1 below)** sized and shaped to attach tissues including at least one self-closing clip having a loop shape **(see fig. 1 below)** terminating at the first end, and a substantially straight bridge portion **(see fig. 1 below)** connecting the two clips; and two tissue piercing members **(the pointed edge 13 on the clips is defined as the piercing member; see fig. 1 below)** including a

first tissue piercing member releasably coupled to the first end and a second tissue piercing member releasably coupled to the second end.

10. **As to claim 25,** Krumme teaches an apparatus that further comprises a release mechanism, and wherein the release mechanism activates and release of the two piercing members from the respective two ends **(see col. 3 lines 50-60)**.

11. **As to claim 26,** Krumme teaches an apparatus wherein the release mechanism activates the closing of the self-closing clip **(see col. 3 lines 50-60)**.

12. **As to claim 39,** Krumme teaches an apparatus wherein each of the clips has a memory set loop configuration and a deformed configuration, and the bridge portion separates the loop from one another when the clips are in their memory set configuration **(see col. 3 lines 50-60)**.

13. **As to claim 40,** Krumme teaches an apparatus wherein each of the clips has a free end **(see fig. 1 below)**.

14. **As to claim 41,** Krumme teaches an apparatus that comprises an elongated member **(the device itself is elongated member)** having a first loop shaped portion adapted to hold tissue therein **(see fig. 1b below)**, a second loop shaped portion adapted to hold tissue therein **(see fig. 1b below)**, and a bridge portion bridging the first and second loop shaped portions **(see fig. 1 below),** each loop shaped portion having a free end and being deformable into a second deformed shape and self tending to return from the second deformed shape toward the loop shape **(see col. 3 lines 50-60)**.

15. **As to claim 42,** Krumme teaches an apparatus wherein the elongated members are not coils **(see fig. 1 below)**.

16. **As to claim 43,** Krumme teaches an apparatus wherein the elongated member is a wire **11 (see col. 3 lines 25-35)**.

17. **As to claim 44,** Krumme teaches an apparatus wherein the wire comprises nitinol **(see col. 5 lines 5-10)**.

18. **As to claim 47,** Krumme teaches an apparatus wherein the bridge portion is substantially straight **(see fig. 1 below)**.

19. **As to claim 48,** Krumme teaches an apparatus that comprises an elongated member **(the device itself is elongated member)** having a first loop shaped portion **(see fig. 1 below)**, a second loop shaped portion **(see fig. 1 below)** and a bridge portion bridging the first and second loop shaped portions **(see fig. 1 below)**, each loop shaped portion having a piercing element **(the tip of the clip comprises the piercing element)** at one end and a portion that merges into the bridge shape portion **(see fig. 1b below)**, each loop shaped portion being deformable into a second deformed shape and having the property of tending to return toward its loop shape by moving upon itself **(see col. 3 lines 25-35)**.

20. **As to claim 49,** Krumme teaches an apparatus wherein the elongated members are not coils **(see fig. 1 below)**.

21. **As to claim 50,** Krumme teaches an apparatus wherein the elongated member is a wire **11 (see col. 3 lines 25-35)**.

22. **As to claim 51,** Krumme teaches an apparatus wherein the wire comprises nitinol **(see col. 5 lines 5-10)**.

23. **As to claim 54,** Krumme teaches an apparatus wherein the bridge portion is substantially straight **(see fig. 1 below)**.

24. **As to claim 55,** Krumme teaches an apparatus that comprises a surgical fastener comprising two clips **(see fig. 1 below)** and a bridge portion **(see fig. 1 below)** connecting said two clips, each clip having a piercing element **(the tip of the clip comprises the piercing element)** at one end thereof; each clip further self-transitioning from an open configuration **(see fig. 1a below)** to a closed configuration **(see fig. 1b below)**, wherein each clip has a proximal end point and a distal end point and wherein the proximal end point is separated from the distal end point when said clip is in said open configuration and wherein the distance between said proximal end point and said distal end point is reduced when said clip is in said closed configuration **(see fig. 1 below)**.

Allowable Subject Matter

25. Claims **31-38** are allowed. The prior art does not disclose a pair of coils, one of the coils surrounding at least a portion of one of the first loop shaped portion and the other of the coils surrounding at least a portion of the second loop shaped portion.

26. Claims **5-19, 21-23, 45, 46, 52 and 53** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not disclose a pair of coils, one of the coils surrounding at least a portion of one of the first loop shaped portion and the other of the coils surrounding at least a portion of the second loop shaped portion.

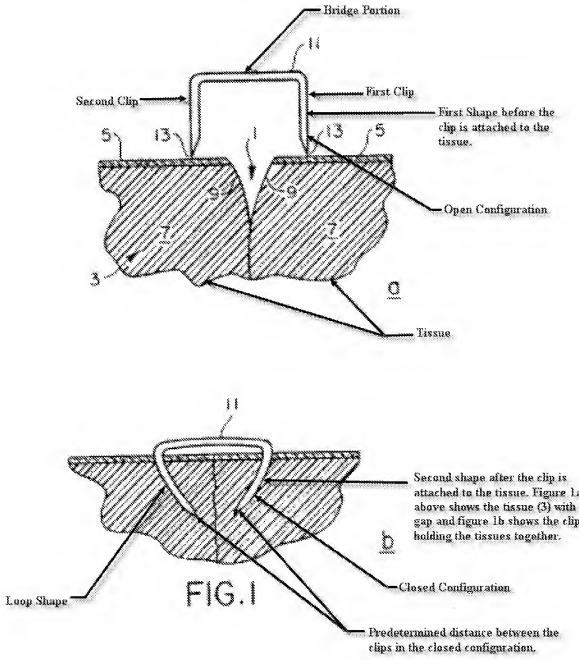
Bridge Portion
11
Second Clip
First Clip
First Shape before the clip is attached to the tissue.
5
13
1
13
5
9
9
7
7
3
Open Configuration
a
Tissue
11
Second shape after the clip is attached to the tissue. Figure 1a above shows the tissue (3) with a gap and figure 1b shows the clip holding the tissues together.
b
Closed Configuration
Loop Shape
Predetermined distance between the clips in the closed configuration.

FIG.1

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772